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MEMORANDUM

TO: FIRE SAFE GENERAL FILE

FROM: LEE E. STANFORD (EXT. 2547)

DATE: APRIL 25, 1994

RE: CONGRESSIONAL HEARINGS ON 1994 MOAKLEY BILL

CC: STEVEN C. PARRISH
CHARLES R. WALL

This is a brief report of the April 20, 1994, hearings on Congressman's Moakley's bill (HR3885) before the Subcommittee on Commerce, Consumer Protection, and Competitiveness chaired by Representative Cardiss Collins (Democrat-Chicago). Ms. Collins opened the meeting with a short, biased statement in which she noted the documents revealed by the "60 Minutes" and then asked why the industry's arguments against the bill should be given any more credibility than the industry's discredited arguments that smoking doesn't cause lung cancer. She also noted that fire-related deaths were disproportionately higher among blacks and poor.

Opening statements of Representatives Cliff Stearns (GOP-Florida), and James Greenwood (GOP-Pennsylvania) followed. Stearns questioned the development of a fire safe cigarette standard, citing the CPSC statement that it is unclear that a standard will have an effect on cigarette-related fires. He noted that the time periods under HR3885 are inadequate and CPSC is short of funds. He also raised the issue of by-passing CPSC authorizing statutes to shortcut rule-making. Greenwood expressed concern about the health effects dilemma, i.e., reducing ignition propensity increases toxicity and vice versa.

Congressman Moakley was the first witness. He asked that the excerpts of the "60 Minutes" tape be shown which he said expressed his views better than he could. The tape was played in its entirety. Moakley then read portions of his written statement of which we have a copy. He closed by saying that he is not on the "ban cigarettes" bandwagon, but he just wants to stop burning people up. Regarding the PM documents, Moakley stated that Mike

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Wallace said that he had received the documents from inside Philip Morris and Moakley must take his word for that.

Ms. Collins described the Angela Smith memos of April 29 and June 9, 1987, and the April 1982 memo from Kallianos and Greene. She then attempted to ask Moakley questions about these memoranda. This tactic was not effective as Collins could not articulate the questions and Moakley's answers were not clear. She asked why the industry had been so reluctant and Moakley responded that it was a difficult advertising issue, he guessed (a la McGuire on "60 Minutes"). Moakley agreed to help provide additional funding to CPSC in light of the recent developments (perhaps meaning the PM documents and/or Ann Brown). He stated to do otherwise would be penny wise and pound foolish.

Representative Stearns (Republican-Florida) stated that the concern of the tobacco companies was the setting of an impossible standard and could Moakley offer any comfort? Moakley stated that the CPSC wanted 18 months to set a standard and I understood him to say that he would be agreeable to allowing two years to meet the standard. He stated that a month or so ago, a company asked for 15 years to meet a standard which he considers ludicrous. He added that there are five fire safe cigarettes on the market, experts tell him that the companies can make these cigarettes, and PM documents indicate that the companies can make acceptable fire safe cigarettes. Greenwood (Republican-Pennsylvania) tried to get Moakley to agree that a standard would be helpful to the companies' product liability concerns. Moakley didn't seem to understand the question and answered that he would like to see the industry agree to a voluntary standard, but they apparently won't do so. He added that some companies have been cooperative. He then stated that it is not realistic to fire proof the whole world against cigarette ignitions as suggested by the industry. Paxon (Republican-New York) raised questions about the CPSC's authority to regulate and whether legislative rules had been bypassed. Moakley responded that no agency wants this issue, but with new leadership at the CPSC, that agency seemed to be the best. Paxon asked for the PM documents and was told that Ms. Collins has them. (Jim Goold will contact a source at the CPSC and attempt to obtain a full set of the documents. Goold described the CPSC set as being about three inches high.)

Ann Brown, new chairman of the CPSC, Dick Gann, and Donald Shopland, DHHS representative, comprised the next panel. Ann Brown read her statement and added that CPSC has been contacted in June 1993 and within the last week by one company (Reynolds-

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David Townsend) that inquired about a voluntary standard. Gann summarized his statement by saying the technology is in place to develop a standard. He summarized the TSG and TAG work and noted that five fire safe cigarettes were on the market. He stated that all objections posed by the industry to the test methods have been found to be technically unsound. He closed by stating the CPSC is technically capable to lead the development of a reduced ignition propensity standard. Shopland then read from his statement which discussed the health effects panel report. He added that results of preliminary testing of TSG/TAG experimental cigarettes showed that tar, nicotine, and CO were in the range of commercial products and that there is slight increase in BaP.

Following their statements, Ms. Collins asked what the industry had said about acceptability about reduced ignition propensity cigarettes. Gann responded that Reynolds and American had presented test data indicating that cigarettes were not acceptable. Other companies either had no such work or claimed it was proprietary. Gann and Brown both read from the Smith memos in response to questions from Collins.

Greenwood asked Brown about standard setting and how far the CPSC would go in sacrificing market acceptability for ignition propensity benefits. She responded that as demonstrated on "60 Minutes," ignition propensity and acceptability are not counter productive. She stated that all evidence indicates that a standard can be developed that will accommodate acceptability.

Collins read a portion of the April 1982 Kallianos/Green memo which discussed a PM test method as an attempt to simulate real world conditions. The implication was that PM had a real world test method in 1982. Gann responded that the memo indicates that PM had a test procedure by which to make in-house appraisals, but this was far different from a standard test method. Ann Brown stated that the memo indicated that Philip Morris had been working on this for a long time. (These answers were helpful.) Collins then read from Jim Charles letter to Gann in 1987 in which Charles said that the TSG could not speak to commercial acceptability since it had not been addressed. Gann's response was that this was a "fair statement" and that it would have been inappropriate for the TSG report to comment on acceptability. Collins closed this panel by stating that she would submit written questions to Gann within five days.

Charlie Whitley and David Townsend comprised the last panel. I was making phone calls during the Whitley presentation.

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When I returned he was reading from the Philip Morris statement prepared by Bill Crampton that dealt with the documents shown on "60 Minutes." This explanation was received without comment. Whitley then addressed the five commercial cigarettes to the effect that they did not perform differently from best selling cigarettes on commercial fabrics as set forth in the statement by American Tobacco. Whitley closed with the comment to the effect that the industry categorically states that we don't have a product on the shelf that will pass Dr. Gann's test that is commercially feasible and the industry does not have the technology to make such a product. Collins cited a March 25 AP story quoting Whitley as denying that cigarettes cause cancer and are not safe. She then asked Whitley a series of primary issue questions to which Whitley responded that smoking is a statistical risk. She asked if nicotine was addictive and Whitley responded that no, it is a habit.

Greenwood asked Whitley if it was possible or impossible to comply with standards legislation. Whitley answered that in the present form of the bill, the industry has no product that will consistently pass the NIST test. (This is probably more accurate than the categorical statement above.) He added that the industry's real concern is having to make cigarettes to pass the NIST test that will not perform better on commercial fabrics, and at the same time these cigarettes will have poor consumer acceptance. He said that the industry is not saying that it cannot make a reduced ignition propensity cigarette, but that it can't make one that will sell.

Townsend stated that his company does not know how to make a cigarette with "marked" reduced ignition propensity that is consumer acceptable. He discussed the performance of the six small circumference cigarettes on commercial fabrics and noted that this demonstrates that the NIST test is not predictive of ignition performance in the real world. Townsend also mentioned two Hungarian cigarettes that represented 70% of the market in Hungary. These cigarettes perform better on the NIST test, but cigarette fire statistics in Hungary are as high or higher than in the United States. Gann was asked to respond. Gann stated that two independent analyses of industry critiques of the NIST test and the industry studies (the 500 fabric survey) had been performed. Both analyses invalidate the industry claim. He added that Dr. Townsend's logic concerning the Hungary cigarettes was so twisted that it didn't deserve a response.

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Whitley noted the California standards and the reduction of fires in California. Collins asked if he was referring to the NASFM petition and added does "that person, or did he used to work for you?" Whitley answered that he (Peter Sparber) was formerly a consultant and that he consults with lots of groups. (Sparber was an employee of TI and the record should be corrected.) This concluded the hearing.

After the hearing, Jim Goold discussed Townsend's contact with CPSC in June 1993 (with Bea Harwood) and a week before the hearing with a CPSC legislative staffer. Brown had characterized these contacts as offers by one company for a voluntary standard. According to Goold, Townsend says the meetings related to offers to work with CPSC to achieve a better test method and that he did not mention a voluntary approach to a standard. Townsend said Reynolds may submit a written statement to Collins "to correct the record." I understand Greg Scott was present when Townsend said he suggested to CPSC that non-filter cigarettes should be targeted.

Incidentally, other than Collins, no Democratic members of the Subcommittee appeared at the hearing. Three Republican members attended, namely Cliff Stearns, James Greenwood, and Bill Paxon. This was considered a good sign. Also, it should be noted that 75 copies of each company's statements were available before the hearing. When I arrived 15 minutes before the hearing began, no copies of the Philip Morris, Lorillard, and Brown & Williamson statements were available. No one knows what happened to them. Buffy Linehan had 75 additional copies of the Philip Morris statement delivered to the hearing room.

Attached to the file copy of this memo are my notes and copies of the materials I was able to pick up at the hearing. These include the agenda and statements of Collins, Moakley, Brown, Gann, the other two CPSC Commissioners, John Hall (NFPA), Fred Clarke, Philip Morris, and Reynolds.

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Attachments

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